

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JULIAN CORYE; and CHRISTINA FERKEY,

Plaintiffs,

v.

1:16-CV-0887  
(GTS/TWD)

POLICE OFFICER MICHEL, Supervisor on Duty;  
SERGEANT ANDERSON; and ALBANY  
DISTRICT ATTORNEY DAVID SOARES,

Defendants.

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APPEARANCES:

OF COUNSEL:

JULIAN CORYE

Plaintiff, *Pro Se*

17960 Ranchera Road

Shasta Lake, California 96019

CHRISTINA FERKEY

Plaintiff, *Pro Se*

17960 Ranchera Road

Shasta Lake, California 96019

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* civil rights action filed by Julian Corye and Christina Ferkey (“Plaintiffs”) against the three above-captioned employees of New York State (“Defendants”) arising from an alleged false arrest and imprisonment in September 2015 within the City of Albany, New York, is United States Magistrate Judge Thérèse Wiley Dancks’ Report-Recommendation recommending that certain of Plaintiffs’ claims be dismissed with prejudice, that certain of their claims be dismissed without prejudice to refiling within thirty days, and that certain of their claims be permitted to proceed. (Dkt. No. 9.) Plaintiffs have not

filed any objections to the Report-Recommendation and the deadline in which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including Magistrate Judge Dancks' thorough Report-Recommendation, the Court can find no clear-error<sup>1</sup> in the Report-Recommendation: Magistrate Judge Dancks employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (Dkt. No. 9.) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 9) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that the following claims in Plaintiffs' Amended Complaint (Dkt. No. 5) are **DISMISSED** with prejudice:

- (1) all of Plaintiffs' claims against Defendant Soares;
- (2) Plaintiffs' negligence claim against Defendant Anderson; and it is further

**ORDERED** that the following claims in Plaintiffs' Amended Complaint (Dkt. No. 5) shall be **DISMISSED** with prejudice without further Order of the Court **UNLESS**, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiffs file a Second Amended Complaint correcting the pleading defects identified by Magistrate Judge Dancks:

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<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

- (1) Plaintiffs' false arrest claim against Defendant Anderson;
- (2) Plaintiffs' false imprisonment claim against Defendant Anderson; and
- (3) Plaintiffs' claim of violation of their right to equal protection against Defendant Anderson;<sup>2</sup> and it is further

**ORDERED** that all of the claims in Plaintiffs' Amended Complaint (Dkt. No. 5) against Defendant Michel (i.e., Plaintiffs' claims of false arrest, false imprisonment and excessive force) may proceed now; and it is further

**ORDERED** that the Clerk shall issue a summons for Defendant Michel using the address found in Plaintiffs' Amended Complaint and forward it, along with a copy of the Amended Complaint, to the United States Marshal for service upon defendant Michel. The Clerk shall forward a copy of the summons and complaint by mail to the Office of the Albany Corporation Counsel at City Hall, Room 106, 24 Eagle Street, Albany, NY 12207, together with a copy of this Decision and Order; and it is further

**ORDERED** that a response to the complaint be filed by defendant Michel, or his counsel, as provided for in the Federal Rules of Civil Procedure; and it is further

**ORDERED** that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must**

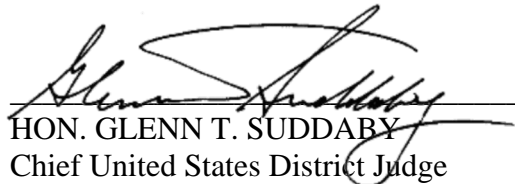
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<sup>2</sup> Plaintiffs are advised that their Second Amended Complaint must be a complete pleading that supersedes their Amended Complaint (Dkt. No. 5) in all respects (and does not incorporate by reference any portion of their Amended Complaint), that they may not reassert any claims that have been dismissed with prejudice by the Court, and that they may not attempt to effect service on any Defendant until such time as authorized by the Court.

**be accompanied by a certificate showing that a true and correct copy of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket.**

Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; their failure to do so will result in the dismissal of his action.**

Dated: November 18, 2016  
Syracuse, New York



HON. GLENN T. SUDDABY  
Chief United States District Judge